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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

METROMEDIA, INC.,

Appellant,

v.

CITY OF SAN DIEGO, a municipal corporation, and DOES I through XX, inclusive,

Appellees.

PACIFIC OUTDOOR ADVERTISING CO., INC.,

Appellant,

v.

THE CITY OF SAN DIEGO, a municipal corporation, THE CITY COUNCIL OF SAN DIEGO and DOES I through 10, inclusive,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION *AMICUS CURIAE*

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INTEREST OF AMICUS*

The American Civil Liberties Union (hereafter referred to as the "ACLU") is a nationwide, non-partisan organization of over 200,000 members, dedicated to defending the fundamental liberties guaranteed in the Bill of Rights. Foremost among those liberties is freedom of speech.

Since it was founded more than sixty years ago, the ACLU has been involved directly or as amicus in most of the important free speech cases. This is another such case.

The San Diego ordinance at issue here sharply curtails the flow

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* All parties have consented to the filing of this amicus brief, and their letters of consent have been filed with the Clerk of this Court.

of political speech[1] by completely eliminating billboards, a unique and important mode of communication, from an entire region.

Although the principal purpose of this amicus brief is to discuss the impact of the San Diego ordinance on political speech, the ACLU does not wish to imply lack of concern for the ordinance's impact on commercial speech. For the reasons advanced by Appellants, the ACLU also maintains that this ordinance unconstitutionally abridges commercial speech, which is protected by the First Amendment.

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1. For purposes of this brief, the phrase "political speech" is used to describe all speech other than "commercial speech" -- i.e., all speech that does not simply "propose a commercial transaction." Ohralik v. Ohio State Bar Assn., 436 U.S. 447 (1978).

The ACLU does not contend that all billboards must be permitted in all places, at all times. Limited regulations -- for example, prohibiting billboards from certain uniquely historical or scenic areas -- may be constitutionally permissible. But a complete ban on all off-site billboards throughout San Diego, including commercial and industrial zones, eliminates a distinct and important medium of political speech and thus clearly contravenes the First Amendment.

STATEMENT OF THE CASE

1. Appellants Metromedia, Inc. and Pacific Outdoor Advertising, Inc. appeal from a judgment of the California Supreme Court which reversed a summary judgment in their favor. They challenge San Diego

Ordinance No. 10795 (the "ordinance") as an unreasonable restriction on speech in violation of the First and Fourteenth Amendments.

Appellants are owners of what the ordinance defines as "outdoor advertising display signs" (hereafter referred to as "outdoor signs" or "billboards") which were leased to various persons, usually on a monthly basis, for the purpose of communicating with the public. Although the ordinance refers to "advertising" signs, it orders the removal from city limits of all outdoor signs -- including those conveying political messages -- with only a few limited exceptions.[2]

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[2] Although the majority opinion of the California Supreme Court properly recognizes that the ordinance would be infirm without any limiting
(fn. cont. on next page)

On-site signs[3] which identify religious and historical entities or products and services available at the sign's location, and "temporary political campaign signs" with messages pertaining to an upcoming election are exempt from the ordi-

(fn. cont.)

construction [see Appendices to Jurisdictional Statement (hereafter cited as "A.") at 3a, 4a n.2], the limiting construction added by the court was wholly inadequate. That construction did exclude such small signs as "picket sign[s] announcing a labor dispute or . . . placed in one's front yard proclaiming a political or religious message." Id. However, it left within the ordinance's prohibition all structures carrying such political signs as those depicted in A. I.

3 A. 107a, Sec. 101.0700B.

nance's removal requirements.[4] All other outdoor signs conveying political or commercial messages (hereafter referred to as "off-site" outdoor signs or billboards) are deemed nonconforming signs, and must be dismantled and removed. Thus, the thrust of the ordinance is to eliminate outdoor signs conveying messages that are not specifically related to the premises. See Section 101.0700F of the General Sign Regulations.

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4 A. 112a, Sec. 101.0700F 12 exempts from removal "[t]emporary political campaign signs, including their supporting structures, which are erected or maintained for no longer than 90 days and which are removed within 10 days after the election to which they pertain."

As demonstrated infra, even this narrow exemption is illusory because, by reason of the ordinance, there will be no structures on which to post such signs. In light of the substantial expense involved, political candidates will not be able to erect such temporary structures each time they wish to speak.

San Diego asserts as its purposes in eliminating outdoor signs the promotion of traffic safety, the improvement of the city's appearance, and "ensuring that signing is used as identification and not as advertisement."[5]

2. In the summary judgment proceedings before the California Superior Court, the parties stipulated to the following facts: prior to this ordinance San Diego restricted the erection of billboards to an area comprising less than 3% of the City's total area, and billboards were permitted only in places zoned for commercial and industrial purposes;[6]

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5 A. 106a-107a, Sec. 101.0700A.

6 A. 121a, 123a, stipulated fact no. 9. Those restrictions are not challenged in this case.

many businesses, politicians, and others who wish to convey a message choose billboards as their medium of expression because other media are "prohibitally [sic] expensive, insufficient and inappropriate";[7] "valuable commercial, political and social information is communicated to the public through billboards; and the ordinance will eliminate the outdoor advertising business" in San Diego, thus eliminating the distinct communication medium of billboards.[8]

Reversing the lower court decision, the California Supreme Court upheld the total ban on outdoor signs.

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7 A. 126a-127a, stipulated fact no. 28.

8 A. 120a, 125a-126a, stipulated facts nos. 2 and 28.

In holding that the ordinance did not violate the First Amendment, that court relied on this Court's summary dismissal, for want of a substantial federal question, of an appeal raising somewhat similar issues, but in a significantly distinguishable factual context, in Suffolk Outdoor Advertising Co. v. Hulse, 439 U.S. 483 (1978).[9]

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9 The California Supreme Court's wholesale reliance on the summary disposition in Hulse was misplaced. In contrast with rulings based upon briefs and oral arguments, summary dismissals are of only limited precedential value. Furthermore, Hulse would not be dispositive of this case in any event because two critical facts present here -- namely, (1) the effective elimination of political billboards resulting from the elimination of the commercial billboard industry from an entire region, and (2) the absence of adequate alternative means to communicate messages carried on billboards -- were not present in Hulse.

SUMMARY OF ARGUMENT

San Diego's ordinance directly and substantially abridges constitutionally protected speech by prohibiting the use of a distinct and effective form of communication, the outdoor sign.

The ordinance discriminates on the basis of content or subject matter, directly excluding from off-site outdoor signs all commercial speech and all but one narrow category of political speech. Moreover, elimination of the sole ostensibly permitted category of political speech -- temporary political campaign messages -- is a foreseeable and inevitable consequence of the ordinance's total elimination of commercial speech from off-site outdoor signs. The use of outdoor signs by commercial

advertisers makes the erection and leasing of the supporting structures for such signs an economically profitable business; therefore, such outdoor sign structures are also available for use by political speakers who, because their use is more sporadic, could not alone support this distinct means of communication. (Point I).

The ordinance would be unconstitutional even if there were adequate alternative means of communication. However, as the parties have stipulated, there are not. (Point II).

San Diego may reasonably regulate the time, place and manner of the use of outdoor signs through a regulation which is necessary to promote compelling governmental interests and is narrowly tailored to encroach only

minimally on protected speech while substantially advancing such interests. However, San Diego's absolute ban on all off-site outdoor signs, at all times, and in all places, is neither a reasonable regulation of time, place or manner, nor is it narrowly tailored as required. Finally, San Diego has failed to meet its burden of proving that the complete ban is necessary to advance, or does advance, any legitimate government interest. (Point III).

ARGUMENT

I. THE ORDINANCE UNCONSTITUTIONALLY DISCRIMINATES ON THE BASIS OF CONTENT OR SUBJECT MATTER, DIRECTLY ELIMINATING FROM OUTDOOR SIGNS ALL POLITICAL SPEECH OTHER THAN ONE LIMITED CATEGORY. MOREOVER, THE ORDINANCE'S ELIMINATION OF COMMERCIAL SPEECH FROM SUCH SIGNS WILL INEVITABLY CAUSE THE COMPLETE ELIMINATION OF ALL POLITICAL SPEECH THEREFROM.

A. The Ordinance Directly Eliminates Most Political Speech, Solely On The Basis Of Its Content or Subject Matter.

The ordinance on its face discriminates against and directly eliminates most political speech. By expressly exempting "temporary political campaign signs" (A. 112a), the ordinance directly prohibits, on the basis of content or subject matter, all other political speech (such as opposition to the United Nations or to the nuclear arms race, or support for Croation independence or the tax-cutting programs advocated by Howard Jarvis -- A.I.).[10]

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10 The ordinance also discriminates against most commercial speech on the basis of content or subject matter. "Signing . . . used as identification" is permitted;

(fn. cont. on next page)

Discrimination against any type of speech -- and certainly against political speech -- on the basis of "either the content or subject matter" is per se unconstitutional. Consolidated Edison Co. of New York v. Public Service Commission of New York, 65 L. Ed. 2d 319, 327 (1980); Carey v. Brown, 65 L. Ed. 2d 262, 276 (1980), and cases cited therein.[11]

(fn. cont.)

signing used as "advertisement" is not. A. 106a. However, in light of the ordinance's explicit discrimination against all political speech other than temporary political campaign speech, it is not necessary to explore its subject matter discrimination against most commercial speech.

11 Assuming arguendo that the challenged ordinance were a reasonable time, place or manner regulation (which, as discussed infra, it is not), it would still be unconstitutional for the reason that an

(fn. cont. on next page)

Even if such subject matter discrimination were not per se unconstitutional, San Diego has advanced no interest -- whether denominated compelling, substantial or rational -- which would justify permitting one category of political speech but prohibiting all others. If, for example, Howard Jarvis ran for elective office,

(fn. cont.)

otherwise "constitutionally permissible time, place or manner restriction may not be based upon either the content or subject matter of speech." Consolidated Edison Co. of New York v. Public Serv. Comm. of New York, 65 L. Ed. 2d 319, at 327 (1980). And as shown more fully infra, even if there were adequate alternatives for the communication of political speech generally, or political campaign speech in particular, this Court has "consistently rejected the suggestion that a government may justify a content-based prohibition by showing that speakers have alternative means of expression." Id. at 330 n.10.

a temporary billboard supporting his program would be permitted. If he were not a candidate, exactly the same temporary billboard, supporting the same program, would be prohibited. The effects, if any, on traffic safety and aesthetics would be identical. There is nothing in the record to justify that discrimination. This Court has never suggested that all other types of political speech are entitled to less First Amendment protection than is political campaign speech. Compare Carey v. Brown, 65 L.Ed.2d 262 (1980).

Thus, both per se and on the record in this case, the ordinance is unconstitutional on its face because it discriminates against most political speech solely on the basis of its content or subject matter.

B. An Inevitable Consequence of The Ordinance's Elimination Of Commercial Speech From Off-Site Outdoor Signs is that Political Campaign Speech Will Also be Eliminated from Such Signs.

Even if it were constitutionally permissible to eliminate from outdoor signs all political speech other than temporary political campaign speech, the ordinance's exemption for temporary political campaign speech is illusory; as a result of the ordinance, even that category of political speech will also be eliminated from outdoor signs.

The record in this case conclusively establishes that only a miniscule portion of the income of those (such as Appellants) who erect, maintain and lease billboard structures derives from temporary political campaign signs. It would thus be prohibitively

expensive to erect and maintain such structures only to be leased on infrequent occasions, and then only for temporary periods of time, for political campaign speech. The parties have stipulated that enforcement of the ordinance "will eliminate the outdoor advertising business in the City of San Diego." A. 129a. Elimination of that business would eliminate the billboard structures which it erects and maintains. There would thus be no structures on which to post the temporary political campaign signs which the ordinance ostensibly permits. Moreover, even if some structures were erected temporarily to display political campaign signs, the greater expense of such billboard

messages would directly and foreseeably cause a substantial reduction in the number of such messages.

In short, the ordinance's ban on commercial speech will at a minimum greatly diminish, and more likely completely eliminate, political campaign speech. See Young v. American Mini Theatres, Inc., 427 U.S. 50, 71 n.35 (1975) (upholding zoning ordinance only because it did not "suppress" or "greatly restrict" protected speech).[12]

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12 Indeed, Justice Powell's concurring opinion suggests that a zoning restriction which would suppress speech "to any significant degree," or which would have more than an "incidental and minimal" "impact" on speech, would be unconstitutional. 427 U.S. at 77-79.

The billboard business depends on revenues from commercial speech in much the same way the newspaper business depends on revenues from commercial speech, only much more so. An ordinance prohibiting commercial advertisements in newspapers (in order to conserve trees or reduce litter, for example) would have less impact on the political messages carried by newspapers than would the commercial billboard ban at issue here, since newspapers might still be sold (albeit at a sharply higher price). Nevertheless, a complete ban on commercial speech in newspapers would certainly be held unconstitutional. A fortiori, San Diego's complete ban on commercial speech on off-site billboards, with its significantly greater adverse impact on political speech in that

distinct and important medium of communication, is also clearly unconstitutional.

II. THE ORDINANCE WOULD BE UNCONSTITUTIONAL EVEN IF THERE WERE ADEQUATE ALTERNATIVE MEANS OF COMMUNICATION. IN ANY EVENT, THE PARTIES STIPULATED THAT THERE ARE NO SUCH ALTERNATIVE MEANS.

A. The First Amendment Protects A Speaker's Choice Of A Communication Medium.

Unless speech falls into one of the narrow categories outside First Amendment protection, such as fighting words or obscenity, it comes within "the usual rule that governmental bodies may not prescribe the form or content of individual expression." Cohen v. California, 403 U.S. 15, 24 (1970) (emphasis added).

Although this Court seemed to leave open the question "whether a ban on signs or a limitation on the number of signs could survive constitutional scrutiny if it were unrelated to the suppression of free expression,"[13] as the preceding section of this brief demonstrates, San Diego's ban on outdoor signs does suppress free expression, most notably because, discriminating solely on the basis of subject matter, it eliminates all political speech from outdoor signs.

Even if the ordinance were content-neutral, and banned all speech from outdcor signs regardless of its subject matter, it would still fall afoul of this Court's consistent

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13 Linmark Associates, Inc. v. Town of Willingboro, 431 U.S. 85, 95 n.7 (1976).

rulings that there is a protected First Amendment interest in choosing "the form" of one's expression as well as its content. E.g., Consolidated Edison Co. of New York v. Public Service Commission of New York, 65 L. Ed. 2d 319, 330 n.10 (1980) (adequate alternative means held irrelevant). Accord, Town of Southhampton v. Troyer, No. 80-333, 49 U.S.L.W. 3371 (November 18, 1980), in which this Court summarily affirmed a decision by Judge Weinstein that invalidated an ordinance banning door-to-door solicitation. As Judge Weinstein held, "the Constitution does not allow government to create [even] a rebuttable presumption that people do not wish to be exposed to a particular class of ideas, or mode of expression." Troyer v. Town of

Babylon, 435 F.2d 1135, 1138 (E.D.N.Y.) aff'd sub non. Town of Southampton v. Troyer, No. 80-333, 49 U.S.L.W. 3371 (November 18, 1980).

Billboards have developed in our mobile society as an important and distinct means for the communication of ideas. Highway and street billboards are protected by the American heritage that "wherever the title of streets or parks may rest, they have immemorably been held in trust for the use of the public and, time out of mind, have been used for purposes of . . . communicating thoughts between citizens and discussing public questions." Grayned v. City of Rockford, 408 U.S. 104, 115 (1971), quoting, Hague v. CIO, 307 U.S. 496, 515 (1939). Accord, Carey v. Brown, 65 L. Ed.2d 262, 269 (1980).

Although San Diego may prefer other means of communication, it cannot completely eliminate outdoor signs any more than it could completely eliminate street demonstrations, street leafletting, or street picketing. As this Court stated over fifty years ago in striking down ordinances which absolutely banned leafletting, "mere legislative preferences or beliefs of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." Schneider v. State, 308 U.S. 147, 161 (1939). See also Talley v. California, 362 U.S. 60 (1960).

In Schneider, this Court recognized the importance of leafletting as

a distinct means of communication and invalidated four ordinances that absolutely prohibited the distribution of handbills on public streets. In the decades since Schneider, as motorists have replaced pedestrians, billboards have become the functional equivalent of leaflets.[14] The billboard reaches the same mobile street audience that, according to this Court, the Schneider leafletters had a constitutional right to address.

B. The Existence Of Alternative Communication Media Does Not Permit The Government To Foreclose A Speaker From His Chosen Medium.

The existence of adequate alternative means of communication would

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14 Today, the use of billboards is as "essential to the poorly financed causes of little people" as was the distribution of leaflets nearly forty years ago. Martin v. Struthers, 319 U.S. 141, 146 (1942).

not permit San Diego to restrict a speaker's choice of how best to express his message. "One is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." Schneider, 308 U.S. 147, 163 (1939).

Where, as here, the prohibition of a means of expression is applied according to the subject matter of the speech, this Court's prior decisions establish beyond question that such prohibition violates the First Amendment and would not be saved from unconstitutionality by the existence of alternative means of expression. See n.11, supra. Moreover, the ACLU maintains that under the principles enunciated in this Court's prior decisions, the flat prohibition of an

entire, distinct communication medium would not be saved from unconstitutionality by the existence of alternative media, even if the prohibition did not discriminate according to subject matter.

These principles were recently affirmed when this Court invalidated a regulation which had forbidden Consolidated Edison from expressing its views on controversial issues through the medium of inserts mailed to consumers in billing envelopes. Despite the availability of adequate alternative means for communicating with the public, suppression of this speaker's chosen means was held to infringe its First Amendment rights. Consolidated Edison Co. of New York v. Public Service Commission of New York,

65 L. Ed.2d 319, 330 n.10 (1980). Moreover, unless there is a First Amendment right to choose the means of conveying one's message regardless of whether alternative means exist, the alternatives of brokers' listings and newspaper classified advertisements would have saved an ordinance prohibiting the use of front lawn signs for selling real estate. However, this Court invalidated such an ordinance in Linmark Associates v. Town of Willingboro, 431 U.S. 85 (1976).

C. On The Record In This Case, There Are No Adequate Alternatives To Billboards.

The parties stipulated that the billboard is a unique medium of expression, describing other media, in contrast, as "insufficient, inappropriate and prohibitally [sic] expensive." A. 126a. Nevertheless, the California

Supreme Court ignored the parties' stipulation and concluded to the contrary, finding as a "fact", without any evidentiary support whatsoever in the record, that adequate alternative means of communication existed. A. 22a. The obvious impropriety of this "finding" requires no protracted comment. With no supporting evidence, the court found: "Advertisers . . . can communicate through newspapers, magazines, radio and television . . . [N]on-commercial advertisers . . . also possess a great variety of alternative means of communication, including some methods, such as leafletting, which are not more expensive than billboards."

A. 23a. That finding is not binding here.[15]

In sum, the finding that there are adequate alternatives to outdoor signs is irrelevant and, in any event, cannot be upheld on this record.

III. THE COMPLETE BAN ON OUTDOOR SIGNS CANNOT BE UPHELD BECAUSE SAN DIEGO HAS FAILED TO DEMONSTRATE THAT THE ORDINANCE IS NECESSARY TO ADVANCE ANY COMPELLING GOVERNMENT INTEREST.

The prohibition of an entire and

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This Court has repeatedly ruled that in free speech cases appellate courts have a "duty" and an "obligation" to conduct an "independent" or "de novo" examination of the factual record. E.g., Ohralik v. State Bar Association, 436 U.S. 447 (1978); Letter Carriers v. Austin, 418 U.S. 264, 282 (1974); Rosenbloom v. Metromedia, 403 U.S. 29, 53-54 (1971); Cox v. Louisiana, 379 U.S. 536 (1965); St. Amant v. Thompson, 390 U.S. 727 (1968); Time, Inc. v. Pape, 401 U.S. 279, 284 (1971).

unique medium of expression "strikes at the heart of the freedom to speak." Consolidated Edison of New York v. Public Service Commission of New York, 65 L. Ed.2d 319, 326 (1980). To justify even an incidental limitation on speech the regulation must further a compelling governmental interest and be "no greater than is essential to the furtherance of that interest." United States v. O'Brien, 391 U.S. 367, 377 (1967).

This Court has consistently imposed on government the burden of justifying restrictions on speech. E.g., Consolidated Edison Co. of New York v. Public Service Commission of New York, 65 L. Ed.2d at 319, 326 (1980) ("We must consider whether the state can demonstrate that its regulation is constitutionally per-

missible"). The government bears that burden in both political and commercial speech cases. Central Hudson Gas & Electric v. Public Service Commission, 65 L. Ed.2d 341, 354 (1980) ("The Commission . . . has not demonstrated that its interest in conservation cannot be protected adequately by more limited regulation of appellant's commercial expression"); Linmark Associates v. Town of Willingboro, 431 U.S. 85, 95 (1980); Virginia Board of Pharmacy v. Virginia Consumer Council, 425 U.S. 748, 770 (1975).

Here, the California Supreme Court erroneously required Appellants to show that the ordinance is unnecessary or fails reasonably to relate to San Diego's proffered objectives. A. 7a. That error alone requires reversal.

San Diego's ordinance recites three purposes for eliminating billboards: 1) to promote traffic safety, 2) to improve the city's appearance, and 3) to ensure that signs are used for identification and not advertising purposes. The California Supreme Court made no factual determination that the ordinance is necessary to advance, and does in fact advance, any of those interests. Nor is there any evidence in the record from which the court could have made such a determination. Accord, Linmark Associates v. Town of Willingboro, 431 U.S. 86, 95 (1976).

For example, San Diego has not shown that the ordinance even relates to, let alone substantially advances, the concededly important goal of traffic safety. The California Supreme Court's conclusion "as

a matter of law that an ordinance which eliminates billboards designed to be viewed from the streets and highways reasonably relates to traffic safety", A. 7a (emphasis added), is not a finding that the ordinance is "necessary," and in any event does not constitute the required factual justification for the ordinance's abridgement of speech. There was no evidence in the record to support the court's conclusion. The court could as easily have concluded, "as a matter of law," that by providing stimuli to break the tedium of driving, billboards keep drivers alert and thereby prevent accidents. The court's contrary speculation provides inadequate justification for an ordinance that effectively eliminates most political speech from

a unique medium of communication.[16]

The improvement of San Diego's appearance was also found by the California Supreme Court to be sufficient justification for the elimination of outdoor signs. However, this Court previously held precisely the same asserted governmental interest to be insufficient, as a matter of law, to justify an ordinance totally banning another distinct medium of communication -- the leaflet. Schneider v. State, 308 U.S. 147, 162 (1939). In addition, the Court has plainly indicated that governmental interests

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16 The record in this case demonstrates that prior to enactment of the challenged ordinance, billboards had already been zoned out of 97% of the city's area. Accordingly, it should have been easy for San Diego to demonstrate a connection between billboards and accidents, if one existed. No such demonstration was attempted.

of an aesthetic nature cannot justify a complete ban on adult entertainment. Young v. American Mini Theatres, supra, 427 U.S. 50 (1975). "[F]reedom of speech cannot be made subservient to any definition of beauty or aesthetics." State ex rel Dept. of Transportation, 603 P.2d 337, 342 (Okla. 1979). See also Erznozik v. City of Jacksonville, 422 U.S. 205, 212 (1974) (members of the public offended by nudity on drive-in movie screens may avert their eyes); Cohen v. California, 403 U.S. 15, 21 (1970) (members of the public offended by explicit language or symbols condemning the draft may avert their eyes).[17]

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17 Additionally, as other courts have noted, there is some tension

(Footnote continued on next page)

The final purpose of the ordinance asserted by San Diego is to ensure that signs are used for "identification", not "advertising". But this circular justification hardly constitutes a legitimate government interest which might permit a restriction on the use of outdoor signs. To

(Footnote cont'd)

between the two proffered objectives of improving the city's appearance and promoting traffic safety. See, e.g., State ex rel Dept. of Transportation, 603 P.2d 337, 342 (Okla. 1979):

> "The argument is made that our residents are entitled to look at the beauty of the countryside, untrammeled by the blight of billboards, in the face of statements that billboards can be banned because they constitute a distraction to drivers of automobiles. Using this reasoning, one could argue the countryside should be covered with billboards to reduce the temptation to avert one's eyes from the road."

the contrary, it embodies a flagrant censorship on the basis of subject matter which clearly violates the First Amendment. E.g., Consolidated Edison of New York v. Public Service Commission of New York, 65 L.Ed.2d 319 (1980); Virginia Board of Pharmacy v. Virginia Consumer Council, 425 U.S. 748 (1975).

In short, on the record in this case, San Diego has not met its burden of proving that the wholesale ban on outdoor signs is necessary and narrowly tailored to advance compelling government interests while encroaching only minimally on First Amendment rights. Consequently, the ordinance violates the First Amendment.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

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